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 18 GIANT INTERNATIONAL (USA) LTD.

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 20 **UNITED STATES DISTRICT COURT**  
 21  
 22 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

23 JENS ERIK SORENSEN, as Trustee of ) No. 07-CV-02121-BTM-CAB  
 24 SORENSEN RESEARCH AND )  
 25 DEVELOPMENT TRUST, )  
 26 Plaintiff, )  
 27 v. )  
 28 GIANT INTERNATIONAL (USA) LTD., )  
 29 a Delaware corporation, and DOES 1-10, )  
 30 Defendants. )  
 31 \_\_\_\_\_ )  
 32 GIANT INTERNATIONAL (USA) LTD., a )  
 33 Delaware corporation, )  
 34 Cross-Complainant, )  
 35 v. )  
 36 JENS ERIK SORENSEN, as Trustee of )  
 37 SORENSEN RESEARCH AND )  
 38 DEVELOPMENT TRUST, )  
 39 Cross-Defendant. )

Date: February 8, 2008  
 Time: 11:00 am  
 Courtroom 15 - 5th Floor

**NOTICE OF MOTION AND  
 DEFENDANT'S MOTION TO STAY  
 PENDING OUTCOME OF  
 REEXAMINATION PROCEEDINGS**

**NO ORAL ARGUMENT UNLESS  
 REQUESTED BY THE COURT**

1 NOTICE IS HEREBY GIVEN that on February 8, 2008 at 11:00 am, or as soon thereafter as  
2 the matter may be heard by the above-entitled Court, located at 940 Front Street, San Diego, CA  
3 92101-8900, Defendant Giant International (USA) Ltd., will and hereby respectfully does move for a  
4 stay of the above-captioned proceeding pending the ongoing United States Patent & Trademark  
5 Office (“PTO”) reexamination of the patent in suit, U.S. Patent No. 4,934,184 (the “‘184 Patent”).  
6 Defendant’s counsel conferred with Plaintiff’s counsel regarding a stay prior to filing this motion,  
7 but Plaintiff has refused to consent to a stay.

8 A stay of the present litigation is particularly warranted given that this Court has already  
9 stayed the related, earlier-filed case of *Sorensen v. Black and Decker Corp.*, Case No. 06cv1572-  
10 BTM (CAB) as a result of the pending reexamination. *See Sorensen v. Black & Decker Corp.*, 2007  
11 WL 2696590 (S.D. Cal. Sept. 10, 2007). It would waste judicial resources to proceed forward with  
12 this case while staying a case that involves the very same patent.

13 In addition, this case is in its infancy. The complaint was filed on November 6, 2007.  
14 Defendant’s answer and counterclaim was filed on December 3, 2007, and Plaintiff’s reply to  
15 counterclaim was filed on December 4, 2007. The parties have not yet had their early neutral  
16 evaluation conference, and no discovery has been taken. Because the patent in suit may not survive  
17 the PTO’s reexamination, which would negate the basis of this lawsuit, it will conserve the parties’  
18 resources to stay this litigation until the reexamination has been concluded.

19 Moreover, the ‘184 Patent will expire in less than three months such that even if the Patent  
20 were to survive the pending reexamination and Plaintiff were to prove infringement against Giant,  
21 Plaintiff would only be entitled to damages, not injunctive relief. Thus, Plaintiff will not be  
22 prejudiced by the stay.

23 This motion is based on this Notice of Motion and Motion, the accompanying Memorandum  
24 of Points and Authorities in Support thereof, the Declaration of Allison H. Goddard, all of which  
25 have been filed and served concurrently with this Notice of Motion and Motion, on the papers and  
26 records on file in this action, and on such other and further oral and documentary evidence as the  
27 Court may consider at the time of the hearing.

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1 For the reasons set forth in greater detail in the supporting memorandum, Defendant  
2 respectfully requests that the Court order this case stayed pending completion of the PTO's ongoing  
3 reexamination of the '184 Patent.

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6 Dated: December 10, 2007

JACZKO GODDARD LLP

7 SMITH, GAMBRELL & RUSSELL, LLP

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10 By: s/Allison H. Goddard  
11 Allison H. Goddard  
12 Attorneys for Defendant GIANT  
13 INTERNATIONAL (USA) LTD.

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## **Sorensen v. Giant International (USA) Ltd.**

**USDC Case No. 07cv02121 BTM (CAB)**

**Certificate of Service**

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served this 10th day of December, 2007, with a copy of this document via the Court's CM/ECF system. I certify that all parties in this case are represented by counsel who are CM/ECF participants. Any other counsel of record will be served by electronic mail, facsimile transmission, and/or first class mail on the following business day.

/s/ Allison H. Goddard